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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,423	07/10/2001	Michael A. Lloyd	24717-707	8239

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EXAMINER
NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/903,423	LLOYD ET AL.
	Examiner	Art Unit	
	Phuoc H Nguyen	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _08 February 2005_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-20_ is/are pending in the application.

   4a) Of the above claim(s) _9-13 and 18-20_ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-8 and 14-17_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) _1-20_ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some *   c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _March 23, 2005_.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1.   No claim is generic to a plurality of disclosed patentably distinct species

comprising.

Species 1: Claims 1-8 and 14-17 are drawn to "computer network

managing, classified in class 709, subclass 223 drawn to methods of measuring a

performance based on Round Trip Time.

Species 2: Claims 9-13 and 18-20 are drawn to "computer network

managing, classified in class 709, subclass 223 drawn to methods of measuring a

performance based on per group delay, jitter, and loss.

2.   Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even

though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably

distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the

prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of

the other invention.

3.   During a telephone conversation with Thomas B. Haverstock Reg. No.: 32,571 on

April 18, 2005 a provisional election was made without traverse to prosecute the

invention of Species 1, claims 1-8, and 14-17. Affirmation of this election must be made

by applicant in replying to this Office action. Claims 9-13, and 18-20 withdrawn from

further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected

invention.

Response to Amendment

4.   This office action is in response to the amendment filed on February 8, 2005.

Previous office action contained claims 1-17. Applicant amended claims 9 and 14, added

claims 18-20. Amendment filed on February 8, 2005 have been entered and made of

record. Due the Election Restriction requirement (see above). Applicant elected Species

1, claims 1-8, and 14-17. Claims 9-13, and 18-20 withdrawn from consideration due to a

non-elected invention. Therefore, pending claims 1-8, and 14-17 are presented for

further consideration and examination.

Response to Arguments

5.   Applicant's arguments filed February 8, 2005 have been fully considered but they

are not persuasive.

        The applicant argues with respect to claim 1 that Case et al. (Hereafter, Case) U.S.

Patent 6,601,098 does not disclose detect(s) a request for a web page from a terminal,

wherein the web page is at least partially stored at the frequently trafficked portal, a

Uniform Resource Locator (URL) for a web object reference in the web page, and

resolving the URL to the internetwork server as defined by claims 1, 14, and 17.

        The examiner respectively submits that Case's invention teaches a server receives

a request for URL from a client (Figures 3b and 4; and col. 7, lines 4-8 and 43-44); in

response to the request for the web page, downloading the web page to the terminal via

the internetwork, from the web page, retrieving a Uniform Resource Locator for a web

object referenced in the web page (e.g. code with embedded next request URL) and

resolving the URL to the internetwork server (e.g. server send client the page temporarily

moved code with embedded next request URL, (Figure 4 (400,415,405,420); col. 7 lines

8-14, 62-64; and col. 8 lines 17-24), detecting a request for the web object from the

terminal at the internetwork server (Figure 4 (420); col. 7, lines 17-20; and col. 8 lines

17-23), in response to the request for the web object, sending the web object from the

internetwork server to the terminal (Figure 4 (460); col. 7 lines 20-25; and col. 8 lines 39-

47).

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent granted
> on an application for patent by another filed in the United States before the invention by the applicant
> for patent, except that an international application filed under the treaty defined in section 351(a) shall
> have the effects for purposes of this subsection of an application filed in the United States only if the
> international application designated the United States and was published under Article 21(2) of such
> treaty in the English language.

7.   Claims 1-6,9-12, and 17 rejected under 35 U.S.C. 102(e) as being anticipated by

Case et al. (Hereafter, Case) U.S. Patent 6,601,098.

8.   Regarding claims 1 and 17, Case discloses a method of measuring a performance

of a route in an internetwork, the route coupling an internetwork server to a terminal on

the internetwork (Figure 4), the method comprising: at a frequently trafficked portal on

the internetwork, detecting a request for a web page from the terminal, wherein the web

page is at least partially stored at the frequently trafficked portal (e.g. server receives a request for URL from a client, Figures 3b and 4; and col. 7, lines 4-8 and 43-44); in response to the request for the web page, downloading the web page to the terminal via the internetwork, from the web page, retrieving a Uniform Resource Locator for a web object referenced in the web page (e.g. code with embedded next request URL) and resolving the URL to the internetwork server (e.g. server send client the page temporarily moved code with embedded next request URL, (Figure 4 (400,415,405,420); col. 7 lines 8-14, 62-64; and col. 8 lines 17-24); detecting a request for the web object from the terminal at the internetwork server (Figure 4 (420); col. 7, lines 17-20; and col. 8 lines 17-23); in response to the request for the web object, sending the web object from the internetwork server to the terminal (Figure 4 (460); col. 7 lines 20-25; and col. 8 lines 39-47); and concurrent with sending the web object, measuring a Round Trip Time (RTT) of one or more packets sent between the internetwork server and the terminal (col. 8, lines 28-33).

9.   Regarding claims 2-3, Case further discloses the web page is at least partially encoded in a markup language and markup language is the Hyper Text Markup Language (inherently, HTML defines the structure and layout of a web document (e.g. web page)) (Figures 3B and 4).

10.   Regarding claims 4 and 5, Case further discloses the sending the web object from the internetwork server to the terminal is performed via a Hyper Text Transfer Protocol (HTTP) and the Hyper Text Transfer Protocol is HTTP v 1.0 (col. 6, lines 35-48).

11.   Regarding claims 6, Case further discloses the Hyper Text Transfer Protocol is HTTP v 1.1 (col. 7, lines 4).

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

13.   Claims 7 and 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Case

in view of Shaffer et al. (Hereafter, Shaffer) U.S. Patent 6,748,426.

Case discloses detecting a request for the web object from the terminal at the

internetwork server; however, Case fail to teach web object is visually imperceptible, and

a single pixel.

Shaffer discloses web object is visually imperceptible, and the web object is a

single pixel (col. 16, lines 29-31).

It would have been obvious to one of the ordinary skill in the art at the time of the

invention was made to incorporate Shaffer's teaching into Case's method to establish the

web object as small as a single pixel that is virtually undetectable on the terminal

displayed page to reduce the size of the web object and the time it will take for this file to

be transmitted to the client.

14.   Claims 14-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Case in

view of Ronen U.S. Patent 6,026,441.

15.   Regarding claim 14 is substantially the same as claim 1 and is thus rejected for

reasons similar to those in rejecting claim 1. However, Case fails to teach a Domain

Name System (DNS) server on the internetwork, and the DNS server including a

reference which maps the URL for the web object to an Internet Protocol address for an

internetwork on the internetwork.

Ronen teaches a Domain Name System (DNS) server on the internetwork, and the

DNS server including a reference which maps the URL for the web object to an Internet

Protocol address for an internetwork on the internetwork (col. 3, lines 26-42).

It would have been obvious to one of the ordinary skill in the art at the time of the

invention was made to incorporate Ronen's teaching into Case's method to add the DNS

server to the internetwork to obtain the IP address associated with the Internet name

(URL) and establishes a connection with the Web server at that IP address in order to

receive that server's web page.

16.   Regarding claims 15 and 16 list all the same elements of claims 2 and 3, but in

system form rather than method form. Therefore, the supporting rationale of the rejection

to claims 2 and 3 applies equally as well to claims 15 and 16.

Conclusion

17.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of

time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the mailing date of this final action.

18.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

> Lumelsky et al. U.S. Patent 6,463,454
>
> Ohlsson et al. U.S. Patent 6,452,950
>
> Borella et al. U.S. Patent 6,434,606
>
> Killian U.S. Patent 6,438,592

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-

3919. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

Phuoc H Nguyen
Examiner
Art Unit 2143

April 19, 2005

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100